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Attorneys for Defendant, CITY OF SAN JOSE

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

HORTA, LLC, a Delaware limited liability
 company,

Plaintiff,

v.

CITY OF SAN JOSE, a municipal
 corporation,

Defendant.

CASE NO. C02-04086 JF (RS)

[Related Case Nos. C00-20018 JF
 and C05-03778JF]

**STIPULATION AND [PROPOSED]
 ORDER REGARDING HEARING ON
 MOTION TO RECONSIDER, REOPEN
 AND AMEND JUDGMENT**

Judge: Hon. Jeremy Fogel
 Complaint: August 23, 2002

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STIPULATION

WHEREAS, on February 23, 2007, at the request of the parties the Court continued the hearing on the Motion to Reconsider, Reopen and Amendment Judgment ("Motion to Amend") to March 30, 2007 and provided, pursuant to the parties' stipulation, that pending the resolution of settlement discussions the City will not cite operations for the purposes of transporting the San Jose SaberCats area football team as violations of the curfew;

WHEREAS, March 30, 2007 is a legal holiday for the City of San Jose;

WHEREAS, the parties desire additional time to continue their ongoing discussions regarding a potential settlement of the matter.

WHEREAS, the parties wish to continue this matter subject to the same terms and conditions set forth in their stipulation filed February 23, 2007, a copy of which is attached hereto as Exhibit A.

WHEREAS, the parties wish to continue the Motion to Amend to Friday, April 13, 2007.

THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this action that:

April 20

- (1) The hearing on the Motion to Amend should be continued to April 13, 2007;
- (2) The parties will inform the Court if a settlement is reached prior to the continued hearing date;
- (3) This continuance will be on the same terms and conditions as the stipulation and order to continue filed February 23, 2007.

Dated: March 20, 2007

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By: 

JAMES CHADWICK, Esq.
Attorneys for Plaintiff HORTA, LLC

1 Dated: March 20, 2007

RICHARD DOYLE, City Attorney

2
3 By: 

4 NORA PRIMANN, Chief Trial Attorney
JOSEPH DICIUCCIO, Sr. Dep. City Atty
Attorneys for Defendant, CITY OF SAN JOSE

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8 ORDER

9 Pursuant to the stipulation, and good cause appearing therefore, IT IS SO
10 ORDERED.

- 11 (1) The hearing on the Motion to Reconsider, Reopen and Amend Judgment shall
12 be continued to ~~April 13, 2007~~ April 20, 2007 at 9:00 AM.
- 13 (2) The parties shall inform the Court if a settlement is reached prior to the
14 hearing.
- 15 (3) This continuance will be on the same terms and conditions as the stipulation
16 and order to continue filed February 23, 2007.

17
18
19 Dated: March 26, 2007


20 HON. JEREMY FOGEL
United States District Court Judge

Exhibit A

****E-Filed 2/23/2007****

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15 Attorneys for Defendant, CITY OF SAN JOSE

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 19 SAN JOSE DIVISION

20 HORTA, LLC, a Delaware limited liability
 21 company,

22 Plaintiff,

23 v.

24 CITY OF SAN JOSE, a municipal
 25 corporation,

26 Defendant.

CASE NO. C02-04086 JF (RS)

[Related Case Nos. C00-20018 JF
 and C05-03778JF]

**STIPULATION AND ~~PROPOSED~~
 ORDER REGARDING HEARING ON
 MOTION TO RECONSIDER, REOPEN
 AND AMEND JUDGMENT**

Judge: Hon. Jeremy Fogel
 Complaint: August 23, 2002

28 //

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action brought by Horta against the City of San Jose (the "*San Jose Action*");

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("*Horta*") filed its Motion to Reconsider, Reopen, and Amend Judgment (the "*Motion to Amend*") and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has fled a separate action to enforce its right to the requested discovery from the Federal Aviation Administration in the related case *Horta, LLC v. Federal Aviation Administration, et al.*, United States District Court, Northern District of California, Case No. C 05-03778 JF (the "*FAA Action*");

WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in the *FAA Action* to compel the FAA to provide complete responses to Horta's discovery requests and to provide the requested deposition testimony;

WHEREAS, the Court took the FAA's motion to quash and Horta's motion for summary judgment under submission at the close of the December 16, 2005 combined hearing on the motions and has not yet ruled on them;

WHEREAS, the parties have previously stipulated to and the Court has ordered a number of continuances of the hearing date for Motion to Reconsider, Reopen and Amend Judgment;

WHEREAS, discussions between Horta and the City of San Jose regarding a potential settlement of this matter are ongoing;

WHEREAS, Horta and the City of San Jose (the "*City*") agree that:

- (1) The continued hearing on the Motion to Reconsider, Reopen and Amend Judgment should be continued to permit the parties to determine whether a settlement can be reached;

- 1 (2) It is appropriate to continue the hearing date for not more than one month;
- 2 (3) Pending settlement resolution, the City will not cite as violations of the curfew
- 3 operations of Horta's 727 Aircraft (on no more than 15 flights) for the purposes
- 4 of transporting the San Jose SaberCats Arena football team which occur during
- 5 curfew hours prior to the continued hearing date.
- 6 (4) Nothing in this stipulation shall be construed as having any impact on the merits
- 7 of the motion, the parties' positions with respect to the motion, or any future
- 8 actions or determinations of the parties, other than allowing the flights
- 9 described above.

10 THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this action,

11 that:

- 12 (1) The hearing on Motion to Reconsider, Reopen and Amend Judgment should be
- 13 continued for not more than one month;
- 14 (2) The parties will inform the Court if a settlement is reached prior to the continued
- 15 hearing date;
- 16 (3) Pending settlement resolution, the City will not cite as violations of the curfew
- 17 operations of Horta's 727 Aircraft (on no more than 15 flights) for the purposes
- 18 of transporting the San Jose SaberCats Arena football team which occur during
- 19 curfew hours prior to the continued hearing date.
- 20 (4) Nothing in this stipulation shall be construed as having any impact on the merits
- 21 of the motion, the parties' positions with respect to the motion, or any future
- 22 actions or determinations of the parties, other than allowing the flights
- 23 described above.

24

25 Dated: February 21, 2007

SHEPPARD MULLIN RICHTER & HAMPTON LLP


26

27 By: 

JAMES CHADWICK, Esq.
Attorneys for Plaintiff HORTA, LLC

1 Dated: February 22, 2007

RICHARD DOYLE, City Attorney

2
3 By: 
4 NORA FRIMANN, Chief Trial Attorney
5 JOSEPH DiCIUCCIO, Sr. Dep. City Atty
6 Attorneys for Defendant, CITY OF SAN JOSE

7
8 ORDER

9 Pursuant to the stipulation, and good cause appearing therefore, IT IS SO ORDERED.

- 10 (1) The hearing on the Motion to Reconsider, Reopen and Amend Judgment shall
11 be continued to March 30, 2007.
- 12 (2) The parties shall inform the Court if a settlement is reached prior to the hearing.
- 13 (3) Pending settlement resolution, the City will not cite as violations of the curfew
14 operations of Horta's 727 Aircraft (on no more than 15 flights) for the purposes
15 of transporting the San Jose SaberCats Arena football team which occur during
16 curfew hours prior to the continued hearing date.
- 17 (4) Nothing in this stipulation shall be construed as having any impact on the merits
18 of the motion, the parties' positions with respect to the motion, or any future
19 actions or determinations of the parties, other than allowing the flights
20 described above.

21
22
23 Dated: February 23, 2007


24 HON. JEREMY FOGEL
25 United States District Court Judge

1 This Order has been served upon the following persons:

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